

7/6/10
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Attorneys for Preston-Whitney Irrigation Co.

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN RE:

WORM CREEK BASIN, WATER
DISTRICT 13A, WATER RIGHT
ADMINISTRATION PROCEEDING

**PRESTON-WHITNEY IRRIGATION
COMPANY'S PETITION TO INTERVENE
IN PETITION FOR WATER RIGHT
ADMINISTRATION AND COMPLAINT
FOR REMOVAL OF WATERMASTER**

PRESTON-WHITNEY IRRIGATION CO. (hereinafter "Preston-Whitney"), by and through their counsel, Robert L. Harris of Holden, Kidwell, Hahn and Crapo, PLLC, and pursuant to Rules 37.01.01.350-354 of the Rules of Procedure of the Idaho Department of Water Resources ("IDWR"), hereby submits this *Petition to Intervene in Petition for Water Right Administration and Complaint for Removal of Watermaster* as a party in the above-captioned matter.

I. BACKGROUND

By the *Petition for Water Rights Administration and Complaint for Removal of Watermaster* ("Petition for Administration") filed on July 7, 2010 by Eldon and Mary Ann Golightly, Grant and Linda Chadwick, Bert and Laura Wheatley, Seth and Beth Wheatley, and Wheatley Properties, LLC, (hereinafter, collectively "Petitioners"), the Petitioners seek, among other things, a contested case proceeding and an administration of water rights in compliance with the Worm Creek Decree. They also request that the Director of IDWR conduct a hearing to determine if removal of the watermaster for Water District 13A is appropriate.

As set forth herein, Preston-Whitney has direct and substantial interests in the use and administration of water in the Worm Creek Basin and in supporting the watermaster who is responsible for that administration. Through this *Petition to Intervene* ("Petition"), Preston-Whitney seeks to intervene as a party in these matters to protect their interests.

II. STATEMENT OF PRESTON-WHITNEY'S INTEREST AND GROUNDS FOR INTERVENTION

Intervention as a party is authorized in a proceeding before IDWR if the petition is timely, the petitioner can demonstrate a direct and substantial interest in the proceeding, the participation of the petitioner will not unduly broaden the issues before IDWR, and the petitioner's interests are not adequately represented by another party to the proceeding.¹ As set forth below, Preston-Whitney meets all of the criteria to intervene as a party in the above-captioned matter.

¹ IDAPA 37.01.01.350, 37.01.01.351, 37.01.01.352, 37.01.01.353. (IDWR Rules of Procedure).

A. Preston-Whitney's Petition to Intervene is Timely.

Under IDWR's Rules of Procedure, petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Preston-Whitney's Petition is timely because the Petition for Administration was filed on July 7, 2010, and no pre-hearing has been scheduled and no hearing dates have been set to hear the matter.

B. Preston-Whitney has a Direct and Substantial Interest in this Proceeding.

Preston-Whitney holds several water rights in the Worm Creek Basin that could be impacted by this action. Furthermore, the Petitioners have asserted that their *Petition for Administration* is necessary as a direct result of actions by Preston-Whitney which have "significantly diminished the historic volumes of water available for diversion by the Petitioners from Spring Creek."² The Petitioners have also alleged that Preston-Whitney has: (1) illegal diversions because of improper or non-existent measurement devices;³ (2) illegally enlarged their water use under their water rights;⁴ (3) illegally diverted water to storage;⁵ (4) exceeded flow rates and annual volumes of their water rights through the use of illegal diversions;⁶ and (5) used the natural channels in violation of Idaho Code Section 42-105.⁷

² *Petition for Water Rights Administration and Complaint for Removal of Watermaster*, p. 6.

³ *Id.* at 6.

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ *Id.* at 9.

⁷ *Id.* at 10.

Nearly every reason that the Petitioners have given supporting the necessity of their *Petition for Administration* involves some action or alleged action by Preston-Whitney. As such, Preston-Whitney has a very direct interest in the above-captioned matter to address these issues, which Preston-Whitney asserts have no merit. Accordingly, Preston-Whitney seeks to intervene in this action to protect its vested water rights and address the matters raised by Petitioners.

Furthermore, given that fact that Preston-Whitney has water rights within the Worm Creek Basin (Water District 13A), Preston-Whitney has a substantial interest in supporting the water master whose job it is to administer those rights. It is Preston-Whitney's position that the water master has not "failed to perform his duty to properly administer water rights within the Water District" as Petitioners have alleged.⁸ Therefore, Preston-Whitney has a substantial interest in defending his actions against Petitioners' attempt to have him removed.

C. Preston-Whitney's Participation in this Matter Will Not Unduly Broaden the Issues Before IDWR.

The disposition of this action will directly affect the administration of water rights within the Worm Creek Basin. Preston-Whitney is seeking intervention to address Petitioners' claims and protect against any detrimental administrative action proposed by the Petitioners and defend against any claims made by Petitioners relative to water rights administration. Preston-Whitney's participation in this matter will therefore not unduly broaden the issues before IDWR.

As stated above, Petitioners have further alleged that the watermaster has failed to perform his duty. Preston-Whitney believes that this is not accurate and is seeking intervention to defend this

⁸ *Id.* at 11.

position and their interests in the administration of water rights in Water District 13A. Again, Preston-Whitney's participation in this matter will not unduly broaden the issues before IDWR.

D. Existing Parties do not Adequately Represent Preston-Whitney's Interests.

Preston-Whitney owns separate and distinct water rights from other parties in this matter. Furthermore, the Petitioners have specifically targeted Preston-Whitney and other canal and reservoir companies in their *Petition for Administration*. Even though other potential parties may be similarly situated in certain respects, these other parties have not yet intervened, and furthermore, Preston-Whitney seeks to ensure the protection of its distinct and separate water rights even if they are permitted to intervene. Therefore, no other party or potential party is in a position to adequately represent Preston-Whitney, and the only way for Preston-Whitney to protect their interests is through their own representation in this matter.

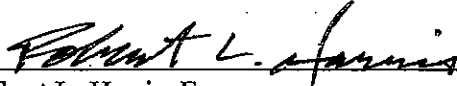
Further, while we presume IDWR will defend the watermaster against Petitioners' complaint, Preston-Whitney intends to submit evidence and testimony in favor of the watermaster. While IDWR's and Preston-Whitney's interests may be aligned, IDWR does not entirely represent Preston-Whitney's rights. IDWR is responsible to represent the broad public interest, not necessarily Preston-Whitney or any other specific water right holder.⁹ As such, no other party is in a position to adequately represent Preston-Whitney in this matter. For these reasons, Preston-Whitney requests intervention in this matter.

⁹ See *Sierra Club v. Glickman*, 82 F.3d 106 (5th Cir 1996).

III. RELIEF REQUESTED

For the reasons set forth above, Preston-Whitney requests that this petition be granted and that Preston-Whitney be accorded full intervenor status.

DATED this 16th day of July, 2010.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 16th day of July, 2010.

**DOCUMENT SERVED: PRESTON-WHITNEY IRRIGATION COMPANY'S PETITION
TO INTERVENE IN PETITION FOR WATER RIGHT
ADMINISTRATION AND COMPLAINT FOR REMOVAL OF
WATERMASTER**

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

(☒) *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Overnight Mail*
(☒) *Email*

Idaho Department of Water Resources
Eastern Region Office
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

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Preston-Whitney Irrigation Company
PO Box 311
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Preston Whitney Reservoir Company
1127 S. 2400 E.
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Cub River Irrigation Company
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Lewiston, UT 84320

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() *Email*

Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd.
PO Box 829
Boise, ID 83701

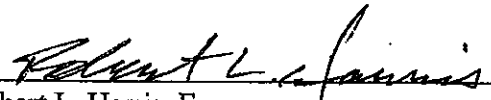
(☒) First Class Mail
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Randall C. Budge
Racine Olson Nye Budge & Bailey, Chtd.
PO Box 1391
Pocatello, ID 83204-1391

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(☒) Email

United States Department of the Interior
Bureau of Land Management
ATTN: Fredric W. Price
1387 S. Vinnell Way
Boise, ID 83709

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(☐) Facsimile
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(☒) Email


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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RECEIVED
JUL 16 2010
Department of Water Resources
Eastern Region

Attorneys for Petitioners
Eldon and Mary Ann Golightly, individually and as
Trustees of E & M Trust; Grant Chadwick, Trustee
of the Chadwick Trust; Bert and Laura Wheatley,
Seth and Beth Wheatley, and Wheatley Properties, LLC

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
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23868.0000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

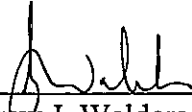
IN THE MATTER OF TRANSFER NO.
75705 IN THE NAME OF PRESTON-
WHITNEY IRRIGATION CO.

MOTION FOR ORDER AUTHORIZING
DISCOVERY

COME NOW Eldon and Mary Ann Golightly, individually and as Trustees of the
E & M Trust; Grant Chadwick, Trustee of the Chadwick Trust; Bert and Laura Wheatley; Seth
and Beth Wheatley; and Wheatley Properties, LLC, by and through undersigned counsel of
record and pursuant to Idaho Department of Water Resources Administrative Rules of
Procedure 260, 520 and 521 (IDAPA 37.01.01.260, 37.01.01.520, and 37.01.01.521), and hereby
move the Department for an order authorizing discovery in the above-captioned matter.

DATED this 14th day of July, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Eldon and Mary Ann
Golightly, individually and as Trustees of
E & M Trust; Grant Chadwick, Trustee
of the Chadwick Trust; Bert and Laura
Wheatley, Seth and Beth Wheatley, and
Wheatley Properties, LLC, Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2010, I caused a true and correct copy of the foregoing **MOTION FOR ORDER AUTHORIZING DISCOVERY** to be served by the method indicated below, and addressed to the following:

Robert Harris
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

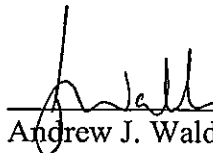
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

PRESTON-WHITNEY IRRIGATION CO.
P.O. Box 311
Preston, ID 83263

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
ATTN: Fredric W. Price
1387 S. Vinnell Way
Boise, ID 83709

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Andrew J. Waldera

RECEIVED
JUL 16 2010
Department of Water Resources
Eastern Region

Attorneys for Petitioners
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Trustees of E & M Trust; Grant Chadwick, Trustee
of the Chadwick Trust; Bert and Laura Wheatley,
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Telephone (208) 345-2000
Facsimile (208) 385-5384
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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.
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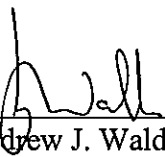
NOTICE OF APPEARANCE AND AMENDED
NOTICE OF PARTY REPRESENTATION

NOTICE IS HEREBY GIVEN that Scott L. Campbell and Andrew J. Waldera of
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, hereby enter their appearance on
behalf of Petitioners. Request is also made that notice of all hearings, pleadings, and other
papers in this matter be given to the undersigned counsel by mailing such to Scott L. Campbell
and Andrew J. Waldera of MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, P.O.
Box 829, Boise, Idaho 83701-0829.

Further notice is hereby given that the named Petitioners in this matter should be listed as: Eldon and Mary Ann Golightly, individually and as Trustees of the E & M Trust; Grant Chadwick, Trustee of the Chadwick Trust; Bert and Laura Wheatley; Seth and Beth Wheatley; and Wheatley Properties, LLC in the above-captioned matter.

DATED this 14th day of July, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Eldon and Mary Ann
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E & M Trust; Grant Chadwick, Trustee
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Wheatley Properties, LLC, Petitioners

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Robert Harris
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
Idaho Falls, ID 83405

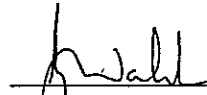
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☐ Facsimile

PRESTON-WHITNEY IRRIGATION CO.
P.O. Box 311
Preston, ID 83263

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UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
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Andrew J. Waldera

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Andrew J. Waldera, ISB No. 6608
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23868.0000

BEFORE THE DEPARTMENT OF WATER RESOURCES
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IN RE:

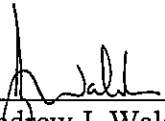
WORM CREEK BASIN, WATER DISTRICT
13A, WATER RIGHT ADMINISTRATION
PROCEEDING

**MOTION FOR ORDER AUTHORIZING
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By 

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Director	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
IDAHO DEPARTMENT OF WATER RESOURCES	<input type="checkbox"/> Hand Delivered
322 E. Front Street, 6th Floor	<input type="checkbox"/> Overnight Mail
P.O. Box 83720	<input type="checkbox"/> Facsimile
Boise, ID 83720	

IDAHO DEPARTMENT OF WATER RESOURCES	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Eastern Region Office	<input type="checkbox"/> Hand Delivered
900 N. Skyline Drive, Suite A	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83402-1718	<input type="checkbox"/> Facsimile

PRESTON-WHITNEY IRRIGATION COMPANY	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
P.O. Box 311	<input type="checkbox"/> Hand Delivered
Preston, ID 83263	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Facsimile

PRESTON RESERVOIR COMPANY	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
1127 S 2400 E	<input type="checkbox"/> Hand Delivered
Preston, ID 83263	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Facsimile

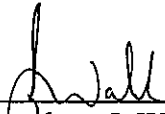
CUB RIVER IRRIGATION COMPANY	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Box 215	<input type="checkbox"/> Hand Delivered
Lewiston, UT 84320	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Facsimile

Robert L. Harris	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
HOLDEN KIDWELL HAHN & CRAPO	<input type="checkbox"/> Hand Delivered
P.O. Box 50130	<input type="checkbox"/> Overnight Mail
Idaho Falls, ID 83405	<input type="checkbox"/> Facsimile

Randall C. Budge	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
RACINE OLSON NYE BUDGE & BAILEY,	<input type="checkbox"/> Hand Delivered
CHARTERED	<input type="checkbox"/> Overnight Mail
201 E. Center	<input type="checkbox"/> Facsimile
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Pocatello, ID 83204-1391	

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Andrew J. Waldera